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**ARIZONA BOARD OF REGENTS
SPECIAL BOARD MEETING
2020 N. CENTRAL AVENUE, STE. 230
PHOENIX, ARIZONA
Tuesday, December 18, 2018
1:00 – 1:15 p.m.**

1:00 p.m. CALL TO ORDER, GREETINGS AND ANNOUNCEMENTS FROM THE BOARD CHAIR

1:01 p.m. 1. Proposed Revisions to ABOR Policy 7-207 “Leases of Real Property” Regarding Use of University Property for Commercial Purposes (Second Reading)

The board office asks the board to approve the proposed revisions to ABOR Policy 7-207 “Leases of Real Property,” regarding the use of university property for commercial purposes.

1:15 p.m. ADJOURN

PLEASE NOTE: This agenda may be amended at any time prior to 24 hours before the board meeting. Estimated starting times for the agenda items are indicated; however, discussions may commence, or action may be taken, before or after the suggested times. Any item on the agenda may be considered at any time out of order at the discretion of the board chair. The board may discuss, consider, or take action regarding any item on the agenda. During the meeting, the board may convene in executive session pursuant to A.R.S. § 38-431.03(A)(3) for legal advice regarding any item on the agenda.

EXECUTIVE SUMMARY

**Item Name: Proposed Revisions to ABOR Policy 7-207 “Leases of Real Property”
Regarding Use of University Property for Commercial Purposes
(Second Reading)**



Action Item

Requested Action: The board office asks the board to approve the proposed revisions to ABOR Policy 7-207 “Leases of Real Property,” regarding the use of university property for commercial purposes.

Background/History of Previous Board Action

- ABOR policy does not define a process for consideration of the use of university property for commercial purposes, beyond requiring approval of a ground lease.
- The ABOR office contracted with RCLCo Real Estate Advisors for real estate consulting services to review current ABOR policy on property governance, and to develop recommendations for an oversight process related to using university property for commercial projects.
- At its meeting in September 2018, the board also adopted a policy position and principles on university property development.
- The board reviewed the first reading of the proposed policy at its November 2018 meeting and was also presented with changes that would be incorporated at second reading.

Discussion

- The policy revisions outline a process that includes four primary components and speaks to the type of information that should be considered and provided at each step.
- Since first reading, new requirements and clarifications have been added. The policy is attached at the end of the executive summary and shows the changes since first reading in highlighted language.
- The following summarizes the components of the process and describes changes since first reading:

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1. Lease Considerations (7-207 B.1): These considerations are based on the principles on university property development adopted by the board. Since first reading, the term “sale-leaseback” has been corrected, and clarification that tax treatment, payments and service agreements should be included in board review of leases.
2. Review and Approval Process (7-207 B.2): Requires leases to be reviewed by the Finance, Capital and Resources Committee, and approved by the board. Since first reading, language has been added that leases and agreements are non-binding until reviewed by the committee and approved by the board. The review and approval process includes the following steps:
 - i. Notification (7-207 B.2.a): Informal notification as soon as possible after conceptualized use of the property.
 - ii. Preliminary Presentation (7-207 B.2.b): Preliminary report submitted for review after agreement providing exclusive rights to work towards eventual use of the property.
 - iii. Final Approval (7-207 B.2.c): Approval request submitted after due diligence and agreement terms have been negotiated. Since first reading, language added to require conformance with considerations in subsection B(1), requiring information related to agreements with other jurisdictions.
3. Ongoing Reporting (7-207 B.3): Requires reporting on the performance, including timelines and financial information relative to the terms of executed leases. Since first reading, language has been added to require reporting at least annually, and require reporting on intended use of revenue received by the university.
4. Definitions (7-207 D): Defines the terms “commercial in nature,” “long-term lease,” and “university property.” Since first reading, clarifies that majority of business can be calculated by lease revenues or allocation of square footage. Also edits the definition of university property.

- The policy also increases the threshold amount of when leases require committee review and board approval from \$500,000 to \$1,000,000.

Statutory/Policy Requirements

- Chapter 7 of ABOR policy governs capital and real property. In particular, section 2 of chapter 7 governs real property transactions.

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7-207 Leases of Real Property

A. All lease agreements and amendments of lease agreements of real property, including lease agreements in connection with any development of capital projects, as defined in Board policy 7-102(B)(3) shall be reviewed by the Finance, Capital and Resources Committee and approved by the Board before becoming effective, except as provided below:

1. A university may enter into a lease or lease amendments as Landlord or Lessor without Board approval (except for use of athletic facilities by professional teams), provided all of the following criteria are met:
 - a. The lease term including all renewals shall not exceed 120 months;
 - b. The annual base lease amount does not exceed \$500,000 \$1,000,000; and
 - c. The rental rate meets or exceeds the fair rental value of the property.
2. A university may enter into leases or lease amendments as tenant or lessee without Board approval provided all of the following criteria are met:
 - a. The original lease term shall not exceed a total of 60 months;
 - b. Renewal options in total shall not exceed an additional 60 months;
 - c. The total annual BASE LEASE AMOUNT ~~rental including tax, insurance and maintenance payable to, through, or on behalf of the landlord shall~~ DOES not exceed \$500,000 \$1,000,000;
 - d. The rental rate does not exceed fair rental value; and
 - e. Funds are available.

B. A university ~~shall report to the Finance, Capital and Resources Committee on its intent to solicit proposals for commercial development on university property, where the majority of the project's business is anticipated to come from a non-university population, and involving a lease or lease~~

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~~amendments that will require review by the Finance, Capital and Resources Committee and approval by the Board pursuant to Subsection A. above. A university also shall report to the Finance, Capital and Resources Committee on negotiating parameters after a proposal has been selected. As applicable, reports may be provided in executive session.~~

A UNIVERSITY MAY SEEK BOARD APPROVAL FOR A LONG-TERM LEASE THAT IS COMMERCIAL IN NATURE. SUCH LEASES ARE SUBJECT TO THE FOLLOWING ADDITIONAL CONSIDERATIONS:

1. WHEN CONSIDERING A LONG-TERM LEASE DESCRIBED IN SUBSECTION B:
 - a. SUCH LONG-TERM LEASES OF UNIVERSITY PROPERTY SHOULD, TO THE EXTENT POSSIBLE, OPTIMIZE THE VALUE OF THE PROPERTY TO THE UNIVERSITY AND ENHANCE THE INSTITUTIONAL MISSION OF THE UNIVERSITY.
 - b. THE UNIVERSITY SHOULD USE FINANCIAL TRANSACTIONS (WHETHER SALE, LEASE, **LEASBACK, SALE-LEASEBACK** OR OTHER MEANS) THAT SUPPORT THE NEEDS OF THE UNIVERSITY TO FACILITATE DEVELOPMENT OF UNIVERSITY PROPERTY.
 - c. IN GENERAL, WHEN A TRANSACTION IS COMMERCIAL IN NATURE, THE UNIVERSITY SHOULD CONSIDER LONG-TERM LEASES OVER THE SALE OF UNIVERSITY PROPERTY UNLESS THE UNIVERSITY CAN DEMONSTRATE TO THE BOARD THAT A SALE WILL PROVIDE A GREATER LONG-TERM BENEFIT.
 - d. UNIVERSITIES SHALL NOT ENGAGE IN LONG-TERM LEASES THAT ARE COMMERCIAL IN NATURE IF THE PRIMARY PURPOSE IS TO REMOVE PRIVATE LAND OR REAL PROPERTY IMPROVEMENTS FROM PROPERTY TAX ROLLS.
 - e. THE UNIVERSITY SHALL DOCUMENT THE ECONOMIC BENEFITS TO THE UNIVERSITY AND THE STATE OF EACH SUCH LONG-TERM LEASE, INCLUDING THE UNIVERSITY'S UNDERSTANDING OF THE TAX TREATMENT OF THE REAL PROPERTY AND PROPOSED IMPROVEMENTS, AND SHALL

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DOCUMENT HOW SUCH LONG-TERM LEASE FURTHERS THE INSTITUTIONAL MISSION OF THE UNIVERSITY.

- f. **WHEN APPROPRIATE**, BOARD REVIEW OF PROPOSED LONG-TERM LEASES THAT ARE COMMERCIAL IN NATURE SHALL INCLUDE A REVIEW OF ANY PAYMENT TO THE UNIVERSITY IN LIEU OF TAXES, THE PROPERTY TAX IMPACTS ON OTHER TAXING JURISDICTIONS, AND ANY SERVICE AGREEMENTS, INCLUDING PAYMENTS, WITH RELEVANT GOVERNMENTAL ENTITIES.
- g. BOARD REVIEW OF PROPOSED LONG-TERM LEASES WILL INCLUDE A REVIEW OF APPROPRIATE COMMUNITY OUTREACH AND COORDINATION WITH COMMUNITY PARTNERS AND RELEVANT GOVERNMENTAL ENTITIES.

2. ALL LONG-TERM LEASES **AND AGREEMENTS** DESCRIBED IN SUBSECTION B SHALL BE **NON-BINDING UNTIL** REVIEWED BY THE FINANCE, CAPITAL AND RESOURCES COMMITTEE AND APPROVED BY THE BOARD AS FOLLOWS, AND AS APPLICABLE, REPORTS MAY BE GIVEN IN EXECUTIVE SESSION:

- a. **NOTIFICATION**. THE UNIVERSITY SHALL REPORT TO THE FINANCE, CAPITAL AND RESOURCES COMMITTEE CHAIR AND VICE-CHAIR AND THE BOARD OFFICE ON ITS INTENT TO SOLICIT PROPOSALS OR TO ENTER INTO TRANSACTIONS WITH POSSIBLE PARTNERS FOR LONG-TERM LEASES ON UNIVERSITY PROPERTY THAT WILL BE COMMERCIAL IN NATURE. THE REPORT SHALL INCLUDE THE PRELIMINARY DEVELOPMENT CONCEPT ASSOCIATED WITH THE LONG-TERM LEASE.
- b. **PRELIMINARY PRESENTATION OF LEASE**. FOLLOWING ENTERING INTO A LETTER OF INTENT OR OTHER AGREEMENT TO PROVIDE EXCLUSIVE RIGHTS UNDER A LONG-TERM LEASE THAT IS ANTICIPATED TO BE COMMERCIAL IN NATURE, A UNIVERSITY SHALL PRESENT ITS PRELIMINARY LEASE PLAN TO THE FINANCE, CAPITAL AND RESOURCES COMMITTEE. THE PRESENTATION SHALL INCLUDE THE FOLLOWING ELEMENTS, AS APPROPRIATE TO THE SCOPE AND STRUCTURE OF THE TRANSACTION:

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- i. CONFORMANCE WITH THE PRINCIPLES AND REQUIREMENTS OUTLINED IN SUBSECTION B, PARAGRAPH 1.
- ii. PRELIMINARY TRANSACTION TIMING AND PROJECT SCHEDULES.
- iii. PRELIMINARY FINANCIAL TERMS AND CONDITIONS, INCLUDING INCOME AND COST ESTIMATES, AS APPLICABLE.
- iv. OTHER INFORMATION AS COORDINATED WITH THE EXECUTIVE DIRECTOR OF THE BOARD.

c. FINAL LEASE APPROVAL. AFTER THE COMPLETION OF DUE DILIGENCE, THE UNIVERSITY SHALL REQUEST A FINAL REVIEW OF THE LONG-TERM LEASE THAT IS COMMERCIAL IN NATURE FROM THE FINANCE, CAPITAL AND RESOURCES COMMITTEE AND APPROVAL OF SUCH LEASE FROM THE BOARD. THE FINAL LEASE PLAN SUBMITTED TO THE COMMITTEE AND THE BOARD SHALL INCLUDE THE FOLLOWING ELEMENTS, AS APPROPRIATE:

- i. CONFORMANCE WITH THE PRINCIPLES AND REQUIREMENTS OUTLINED IN SUBSECTION B, PARAGRAPH 1.
- ii. TERMS AND CONDITIONS OF THE LONG-TERM LEASE, INCLUDING ANY CONSIDERATIONS REGARDING ANY FUTURE TRANSFER OR SALE OF THE LEASE OR LEASHPOLD INTEREST.
- iii. MARKET ANALYSIS.
- iv. RISK ASSESSMENT.
- v. INFORMATION RELATED TO AGREEMENTS WITH OTHER JURISDICTIONS.
- vi. OTHER INFORMATION AS COORDINATED WITH THE EXECUTIVE DIRECTOR OF THE BOARD.

3. ONGOING MONITORING AND REPORTING. AT A TIME AGREED TO BY THE EXECUTIVE DIRECTOR OF THE BOARD, THE UNIVERSITY SHALL AT LEAST ANNUALLY REPORT ON THE STATUS OF ALL EXECUTED LONG-TERM LEASES SUBJECT TO SUBSECTION B, AND THE PERFORMANCE OF SUCH LONG-TERM LEASES. THE REPORT SHALL INCLUDE TIMELINES AND FINANCIAL INFORMATION RELATIVE TO THE TERMS OF EXECUTED AGREEMENTS, THE INTENDED USE OF ANY REVENUE RECEIVED BY THE UNIVERSITY, AND OTHER

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INFORMATION AS COORDINATED WITH THE EXECUTIVE DIRECTOR OF THE BOARD.

- C. All leases entered into shall be reported to the ~~System~~ BOARD office annually in accordance with procedures developed by the ~~President~~ EXECUTIVE DIRECTOR of the Board.
- D. FOR THE PURPOSES OF THIS POLICY:
 - 1. "COMMERCIAL IN NATURE" MEANS THAT A MAJORITY OF BUSINESS, CALCULATED EITHER BY LEASE REVENUES ~~GENERATED OR BY ALLOCATION OF SQUARE FOOTAGE, CONDUCTED AT THE LEASED PROPERTY IS ANTICIPATED TO COME FROM THE NON-UNIVERSITY POPULATION.~~
 - 2. "LONG-TERM LEASE" MEANS A LEASE OF LAND OR REAL PROPERTY IMPROVEMENTS WITH A TERM THAT EXCEEDS 120 MONTHS.
 - 3. "UNIVERSITY PROPERTY" MEANS PROPERTY, THE TITLE OF WHICH IS OWNED AND HELD BY THE ARIZONA BOARD OF REGENTS.